

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**ELOUISE PEPION COBELL, et al.** )

**Plaintiffs,** )

**v.** )

**GALE A. NORTON, Secretary of the** )  
**Interior, et al.,** )

**Defendants.** )

**Civil Action Number 96-1285 (RCL)**

**ORDER ISSUING STRUCTURAL INJUNCTION**

For the reasons set forth in the accompanying memorandum opinions issued this date, the Court hereby issues the following structural injunction:

**I. Definitions**

For purposes of this structural injunction:

- A. “Interior defendants” shall mean the Secretary of the Interior, and the Assistant Secretary of the Interior for Indian Affairs, who are defendants in the present action in their official capacities.
- B. “Trust” shall mean the Individual Indian Money (IIM) Trust.
- C. “Plaintiffs” shall mean all present and former beneficiaries of the Trust.
- D. “The 1994 Act” shall mean the Indian Trust Fund Management Reform Act, Pub. L. No. 103-412, 108 Stat. 4239.
- E. “Order” shall mean the present structural injunction.

- F. “Accounting Plan” shall mean The Historical Accounting Plan for Individual Indian Money Accounts, which was filed by the Interior defendants with this Court on January 6, 2003.
- G. “Comprehensive Plan” shall mean the Department of the Interior Comprehensive Trust Management Plan, which was filed by the Interior defendants with this Court on March 28, 2003, not including any provisions thereof dealing solely with tribal trust issues.
- H. “Compliance Plan” shall mean the Department of the Interior Fiduciary Obligations Compliance Plan, which was filed by the Interior defendants with this Court on January 6, 2003.
- I. “Accounting Standards Manual” shall mean the Accounting Standards Manual dated May 9, 2003, which the Interior defendants filed with the Court as Defendants’ Exhibit 59 during the Phase 1.5 trial in the present action.

## II. General Provisions

- A. The Interior defendants, their agents, employees, successors in office, and any others acting in concert with them are hereby enjoined from failing to implement fully and within the times prescribed each of the provisions of this Order.
- B. If at any time, the Interior defendants’ implementation of this Order is affected by a provision in this Order that is susceptible to more than one reasonable interpretation, then the Interior defendants may file a motion requesting that the Court clarify the provision at issue. If the Interior defendants do not file such a

motion, then the Interior defendants shall construe the provision at issue in accordance with the reasonable interpretation that is most consistent with the “most exacting fiduciary standards” demanded of a trustee.

- C. If at any time, it appears to plaintiffs that the Interior defendants are interpreting any provision of this Order too narrowly or incorrectly, plaintiffs may file a motion requesting that the Court clarify the provision at issue.
- D. The Interior defendants shall administer the Trust in compliance with applicable tribal law and ordinances.
- E. The relief awarded in this Order is supplemental to any relief awarded heretofore in the present litigation, including that awarded in the Court’s memorandum opinion of December 21, 1999, as affirmed by the D.C. Circuit in Cobell v. Norton, 240 F.3d 1081 (D.C. Cir. 2001).

### III. Historical Accounting

- A. Pursuant to the 1994 Act, the Interior defendants shall provide plaintiffs with an accurate accounting of all money in the Trust held in trust for the benefit of plaintiffs, without regard to when the funds were deposited. The Interior defendants shall conduct a historical accounting of the Trust, in accordance with the timetable provided in section IV of this Order. The historical accounting of the Trust shall be undertaken in accordance with the Accounting Plan, except to the extent that any portion of the Accounting Plan is inconsistent with any portion of this Order.

- B. Pursuant to the 1994 Act, the Interior defendants shall retrieve and retain all information concerning the Trust that is necessary to render an accurate accounting of all money in the Trust held in trust for the benefit of plaintiffs. As affirmed by the D.C. Circuit, the Interior defendants possess an obligation to recover missing trust records where possible, and develop plans and procedures sufficient to ensure that all aspects of the accounting process are carried out. Accordingly, within sixty (60) days of the date of this Order, the Interior defendants shall file with this Court, and serve upon plaintiffs, a detailed plan (1) to determine which records related to the Trust are likely to be possessed by entities outside of the federal government, (2) to identify the records related to the Trust maintained by such entities, and (3) to issue subpoenas, where appropriate, to ensure that records related to the Trust will be preserved. Within thirty (30) days of the date that this plan is filed with the Court, plaintiffs may submit a brief in response to the plan, which brief may include an alternative or supplemental plan to the plan submitted by the Interior defendants.
- C. Within ninety (90) days of the date of this Order, the Interior defendants shall file with this Court, and serve upon plaintiffs, a detailed plan containing a timetable for completion of its collection and indexing of all records related to the Trust. This plan shall include a complete explanation of whether the indexing methods proposed in the Accounting Plan for indexing records related to the Trust located in Albuquerque, New Mexico and in Lee's Summit, Missouri, shall be used for indexing the remaining records related to the Trust that are held by the federal

government.

- D. The historical accounting of the Trust conducted by the Interior defendants shall account for all funds in the Trust deposited or invested pursuant to the Indian Reorganization Act of 1938, 48 Stat. 984, regardless of whether such funds were deposited or invested before or after October 25, 1994.
- E. The historical accounting of the Trust conducted by the Interior defendants shall account for all funds deposited or invested in the Trust since the passage of the General Allotment Act of 1887, 24 Stat. 388.
- F. The historical accounting of the Trust conducted by the Interior defendants shall account for all funds deposited or invested in the Trust, regardless of whether such funds were deposited or invested during the lives of beneficiaries of the Trust who are now deceased.
- G. The historical accounting of the Trust conducted by the Interior defendants shall account for all assets held by the Trust since the passage of the General Allotment Act of 1887, 24 Stat. 388.
- H. The historical accounting of the Trust conducted by the Interior defendants shall account for all monies paid to beneficiaries of the Trust in conjunction with direct-pay leases and contracts entered into by such beneficiaries.
- I. The historical accounting of the Trust conducted by the Interior defendants shall account for all funds deposited or invested in the Trust, regardless of whether the assets generating such funds were or are administered or managed by one or more Indian Tribes pursuant to a contract, compact, or other cooperative agreement in

accordance with the Indian Self-Determination Act and Education Assistance Act of 1975, Pub. L. No. 93-638, 88 Stat. 2203, as amended.

- J. The historical accounting of the Trust conducted by the Interior defendants shall account for all property interests that escheated from beneficiaries of the Trust pursuant to the Indian Land Consolidation Act, 96 Stat. 2519, as amended (“ILCA”), and that reverted back to any beneficiary of the Trust prior to the completion of the historical accounting of the Trust. Additionally, all property interests that escheated from beneficiaries of the Trust pursuant to ILCA and that reverted back to any beneficiary of the Trust after the completion of the historical accounting of the Trust must be accounted for in one of the subsequent accounting reports to that beneficiary, the issuance of which has been mandated by the 1994 Act.
- K. The historical accounting of the Trust conducted by the Interior defendants shall not make use of any statistical sampling procedure to verify the existence of any transactions that have occurred during the existence of the Trust, except as part of an audit of the historical accounting of the Trust.
- L. The historical accounting of the Trust conducted by the Interior defendants shall include a verification process conducted by professional accountants using the representations in the Accounting Standards Manual to verify the existence of each individual transaction occurring during the existence of each presently-existing or previously-existing account within the Trust through the use of supporting documentation. The Interior defendants shall use only the version of the

Accounting Standards Manual that the Interior defendants filed with the Court as Defendants' Exhibit 59 during the Phase 1.5 trial in the present action, unless changes to the Accounting Standards Manual have been approved by the Court.

- M. The accounting statements that shall be transmitted by the Interior defendants to each living beneficiary of the Trust after the Interior defendants have completed their historical accounting of the Trust shall include a description of the assets belonging to each living beneficiary of the Trust or his or her predecessors in interest; a description of all changes to the assets belonging to each living beneficiary or his or her predecessors in interest during the existence of the Trust; and a description of the assets belonging to each living beneficiary of the Trust.
- N. Within ninety (90) days of the date of this Order, the Interior defendants shall file with the Court, and serve upon plaintiffs, a plan describing in detail each of the five system tests described on page III-18 of the Accounting Plan. If any of these five system tests will involve the usage of sampling techniques, the plan shall provide a detailed description of the specific technique to be utilized, including the sample size and sampling method. Within thirty (30) days after the filing of this plan, plaintiffs may submit a brief in response to the plan, which brief may include an alternative or supplemental plan to the plan submitted by the Interior defendants.
- O. Within sixty (60) days of the date of this Order, the Interior defendants shall file with the Court, and serve upon plaintiffs, a plan describing in detail each of the quality control (QC) measures described in Appendix C of the Accounting Plan

that have already been implemented. The plan shall also describe in detail each of the QC measures that the Interior defendants will undertake in conjunction with their historical accounting of the Trust. Within thirty (30) days after the filing of this plan, plaintiffs may submit a brief in response to the plan, which brief may include an alternative or supplemental plan to the plan submitted by the Interior defendants.

- P. Within one hundred twenty (120) days of the date of this Order, the Interior defendants shall file with the Court, and serve upon plaintiffs, a plan that analyzes the use of industry production databases such as PI/Dwights and computer software such as Geographic Information System (“GIS”) in conjunction with the historical accounting of the Trust that will be performed by the Interior defendants. This plan shall include an analysis of the use of such production databases and software as a means of filling gaps in the records relating to the Trust, and an analysis of the potential usefulness of such production databases and software as a test or verification of the completeness of the historical accounting of the Trust that will be performed by the Interior defendants. If the Interior defendants decide not to use such production databases and software in conjunction with their historical accounting of the Trust, the plan shall explain, in detail, (1) which measures the Interior defendants have already implemented or will implement that will function as an adequate means of filling gaps in the records relating to the Trust and testing or verifying the completeness of the historical accounting of the Trust that will be performed by the Interior defendants and (2) why the use of such



production databases and software will not serve as an appropriate supplement to such measures. Within thirty (30) days after the filing of this plan, plaintiffs may submit a brief in response to the plan, which brief may include an alternative or supplemental plan to the plan submitted by the Interior defendants.

### III. Compliance with Fiduciary Obligations

- A. The Interior defendants shall implement the Comprehensive Plan, except to the extent that any portion of the Comprehensive Plan is inconsistent with any portion of this Order.
- B. Within ninety (90) days of the date of this Order, the Interior defendants shall file with the Court, and serve upon plaintiffs, a detailed plan identifying the specific measures that Interior defendants will take as part of their To-Be Plan to bring themselves into compliance with the fiduciary duties imposed upon trustees at common law, as identified by this Court in its memorandum opinions issued this date. This detailed plan statement shall identify any portion of the To-Be Plan that might be deemed to be inconsistent with any of these fiduciary duties, and include a full explanation of why the identified portion or portions should not be considered to be inconsistent with any of these fiduciary duties. Within thirty (30) days after the filing of this plan, plaintiffs may submit a brief in response to the plan, which brief may include an alternative or supplemental plan to the plan submitted by the Interior defendants.
- C. Within one hundred twenty (120) days of the date of this Order, the Interior

defendants shall file with the Court, and serve upon plaintiffs, a list of tribal laws and ordinances that the Interior defendants deem applicable to the administration of the Trust. The list shall include a full statement of the manner in which the Interior defendants consider these laws and ordinances to affect such administration. Within thirty (30) days after the filing of this list, plaintiffs may submit a brief in response to this list, which brief may include an alternative or supplemental list to the list submitted by the Interior defendants. The Court also grants leave for the National Congress of American Indians (NCAI) to submit an amicus curiae brief in response to this list within thirty (30) days after the filing of this list, which brief may include an alternative or supplemental list to the list submitted by the Interior defendants.

- D. Within ninety (90) days of the date of this Order, the Interior defendants shall file with the Court, and serve upon plaintiffs, a detailed plan of measures it will take to correct the problems with the leasing, title, and accounting systems of the Trust identified by NCAI in its amicus curiae brief that was filed with this Court on March 3, 2003. This plan shall include a detailed timetable for the implementation of specific measures to correct such problems. Within thirty (30) days after the filing of this plan, plaintiffs may submit a brief in response to this list, which brief may include an alternative or supplemental plan to the plan submitted by the Interior defendants.
- E. Within one hundred twenty (120) days of the date of this Order, the Interior defendants shall file with the Court, and serve upon plaintiffs, a detailed plan

identifying the specific measures that the Interior defendants will take as part of their To-Be Plan to distinguish principal from income during their historical accounting of the Trust.

#### IV. Timetable

##### A. Historical Accounting<sup>1</sup>

1. By September 30, 2004, the Interior defendants shall complete (1) their accounting of all judgment accounts and per capita accounts in the Trust, as described in the Accounting Plan, (2) their indexing of all Trust-related records located at federal records facilities in Albuquerque, New Mexico, and Lee's Summit, Virginia, as described in the Accounting Plan, and (3) their system tests of the Trust relating to (a) electronic data gaps and (b) the system conversion from the Integrated Records Management System ("IRMS") to the Trust Funds Accounting System ("TFAS"), as described in the Accounting Plan
2. By September 30, 2005, the Interior defendants shall complete (1) their accounting of all transactions in all land-based accounts in the Trust from the Electronic Records Era (1985-present), as described in the Accounting Plan, and (2) their system test of the Trust relating to the system conversion from paper records to IRMS, as described in the Accounting Plan.

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<sup>1</sup> The dates presented in the following schedule for the historical accounting process are based on estimates presented by Interior in the Accounting Plan for the completion of these tasks.

3. By September 30, 2006, the Interior defendants shall complete (1) their accounting of all transactions in all land-based accounts in the Trust from the Paper Records Era (1887-1985), as described in the Accounting Plan, and (2) their system tests of the Trust relating to interest calculations, postings, and ownership, as described in the Accounting Plan.
4. By September 30, 2007, the Interior defendants shall complete their cleanup of all special deposit accounts in the Trust, as described in the Accounting Plan.

B. Compliance with Fiduciary Obligations

1. Within ninety (90) days of the date of this Order, the Interior defendants shall (1) complete their identification of Trust-related documents necessary to render an accurate accounting of the Trust, as described in the Compliance Plan; (2) establish and implement training programs for records custodians on the usage of the new records retention schedules for Trust records, as described in the Compliance Plan; (3) draft and implement policies and procedures regarding the retrieval of Trust records, as described in the Compliance Plan; (4) complete their departmental review of policy and procedures for their collection of missing Trust information from third parties; (5) add the status of funds in the Trust (i.e., whether invested or not) to the quarterly statements of account distributed to the beneficiaries of the Trust; (6) add a gains and losses explanation to

the quarterly statements of account distributed to the beneficiaries of the Trust, as described in the Compliance Plan; (7) transmit a letter relating to the fiscal year 2002 audit of the Trust to all account holders of the Trust, as required by the 1994 Act; (8) contract for third-party investment management of the Trust, as described in the Compliance Plan; (9) request legislation from Congress to satisfy part of its imbalance of Trust fund balances with the U.S. Department of the Treasury (“Treasury”), as described in the Compliance Plan; (10) determine their options for fully resolving the imbalance of Trust fund balances with Treasury, as described in the Compliance Plan; (11) request an expansion of the fiscal year 2004 annual audit to include all funds held in trust by the United States for the benefit of an individual Indian that are deposited or invested pursuant to the Act of June 24, 1938 (25 U.S.C. § 162a); and (12) review the records retentions of Interior agencies other than the Bureau of Indian Affairs (“BIA”) and the Office of the Special Trustee (“OST”) to ensure that Trust-related documents necessary to render an accurate accounting of the Trust are properly retained.<sup>2</sup>

2. Additionally, by December 31, 2003, the Interior defendants shall (1) resolve the validation of documentation for automatic disbursement authorizations occurring prior to the installation of TFAS, as described in

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<sup>2</sup> The above-listed tasks are tasks that Interior estimated in the Compliance Plan that it would complete on or before September 30, 2003.

the Compliance Plan; and (2) establish and implement revised records retention schedules for non-electronic Trust records for BIA and OST, as described in the Compliance Plan.

3. By March 31, 2004, the Interior defendants shall (1) complete their To-Be Plan, as described in the Comprehensive Plan, and shall file the completed To-Be Plan with the Court; (2) establish and implement revised records retention schedules for electronic Trust records for BIA and OST, as described in the Compliance Plan; (3) index all identified documents under the control of the Office of Trust Records (“OTR”) that are necessary to perform an accurate accounting of the Trust, as described in the Compliance Plan; and (4) establish and implement a Privacy Act program to ensure their compliance with federal and departmental Privacy Act regulations and directives, provide training to all of their employees concerning their employees’ responsibilities for handling Privacy Act documents, and conduct an inspection of areas where records subject to the Privacy Act are maintained, as described in the Compliance Plan.
4. By June 30, 2004, and thereafter, the Interior defendants shall transmit a letter to all account holders of the Trust relating to the annual audit of the Trust for the previous year, as required by the 1994 Act.
5. By September 30, 2004, the Interior defendants shall fully resolve the imbalance of Trust fund balances with Treasury, as described in the Compliance Plan.

6. By May 31, 2005, the Interior defendants shall fully implement the completed To-Be Plan, as described in the Comprehensive Plan.

C. Amendment of the Timetable

1. Within ninety (90) days of the date of this Order, the Interior defendants shall file with this Court, and serve upon plaintiffs, a detailed proposed timetable for the completion of their historical accounting of the Trust. This timetable shall include specific dates for the Interior defendants' completion of important milestones in their historical accounting of the Trust, including the completion of the collection process, accounting process, and reporting process. The proposed timetable shall include a detailed explanation as to why each of the selected dates were chosen. Within thirty (30) days after the filing of this proposed timetable, plaintiffs may submit a brief in response, which brief may include an alternative or supplemental timetable to the timetable submitted by the Interior defendants.
2. Within ninety (90) days of the date of this Order, the Interior defendants shall file with this Court, and serve upon plaintiffs, a timetable for the completion of the entire indexing process of Trust-related records to be undertaken as part of the Interior defendants' historical accounting of the Trust. This timetable shall include a detailed explanation of how the indexing methods proposed in the Accounting Plan for indexing the Trust-related records located at Albuquerque, New Mexico and Lee's Summit,

Missouri differ, if at all, from the indexing methods that the Interior defendants will use to index the boxes of Trust-related records held by the federal government that are not located at Albuquerque, New Mexico and Lee's Summit, Missouri.

3. The Interior defendants may submit to this Court a motion to amend the portions of the above timetable relating to the Interior defendants' completion of the accounting of the land-based accounts in the Trust and for the historical accounting of the Trust as a whole. If the Interior defendants submit such a motion, it shall be served upon plaintiffs, and shall include specific dates for the completion of the Interior defendants' completion of their accounting of the land-based accounts in the Trust and of the historical accounting as a whole, as well as a detailed explanation of its reasons for selecting these specific dates. Within fifteen (15) days after the filing of this proposed timetable, plaintiffs may submit a brief in response to the timetable.
4. Any amendments to the above timetable at the behest of either of the parties shall only be made upon motion, for good cause shown.
5. The Interior defendants shall inform the Court immediately if they receive any information that might affect their compliance with the above timetable.

## V. Judicial Monitor



- A. The Court shall appoint a Judicial Monitor to report on the Interior defendants' compliance with the provisions of this Order. The Judicial Monitor shall be assisted by several subordinate officials ("agents").
- B. The Judicial Monitor shall be appointed pursuant to Rule 53 of the Federal Rules of Civil Procedure, and shall possess all authority bestowed on special masters pursuant to Rule 53. The Judicial Monitor and his or her agents shall be compensated at the prevailing market rate for their services and shall be reimbursed for all expenses incurred in connection with their appointment. The Interior defendants shall bear these costs, as their unlawful actions necessitated these appointments.
- C. The Interior defendants shall provide the Judicial Monitor and his or her agents with unlimited access to the Interior defendants' facilities and to all information relevant to the implementation of this Order, in order that the Judicial Monitor and his or her agents may be made cognizant of any failures to comply with the provisions of this Order.
- D. The Judicial Monitor and his or her agents shall have the power to conduct confidential interviews with the Interior defendants and any of their subordinates.
- E. Reports containing the Judicial Monitor's findings and conclusions with respect to the Interior defendants' compliance with this Order, as well as recommendations regarding its modifications or enforcement, shall be submitted to this Court for evaluation on a periodic basis, and when specifically requested by this Court or deemed necessary by the Judicial Monitor. The Judicial Monitor's reports shall be

served upon the parties and upon NCAI.

F. The Judicial Monitor shall meet with a representative or representatives of NCAI, as designated by NCAI, on a quarterly basis. The Judicial Monitor shall file with this Court, and serve upon the parties and NCAI, a complete report of any discussions that take place during these meetings.

G. The Judicial Monitor and his or her agents shall not intervene in the administrative management of the Interior defendants. The Judicial Monitor and his or her agents shall not direct the Interior defendants or any of their subordinates to take or to refrain from taking any specific action to achieve compliance with this Order. The Judicial Monitor and his or her agents shall not consider matters that go beyond superintending or reporting upon compliance with this Order.

#### VI. Retention of Jurisdiction

This Court shall retain jurisdiction over the present matter until December 21, 2009. This retention of jurisdiction shall be subject to any motion for an enlargement of time that may be made.

SO ORDERED.

Date: \_\_\_\_\_

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Royce C. Lamberth  
United States District Judge